**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

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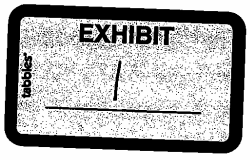
| IN RE MUTUAL FUNDS INVESTMENT LITIGATION | ) | MDL-1586 |
| | ) | |
| | ) | Case No. 04-md-15862 |
| Bank of America sub-track | ) | |
| | ) | |
| | ) | |

**SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF THE MOTION TO DISMISS THE DERIVATIVE COMPLAINT AND THE CLASS ACTION COMPLAINT IN THE BANK OF AMERICA SUB-TRACK**



594 F.2d 388, 394 (4th Cir. 1979). There are no allegations that the trustees were aware of the Canary or TranSierra relationship with BACAP, much less that they participated in such relationship. Plaintiffs cannot simply rely on the "aggregation of the defendants without specifically alleging which defendant was responsible for which act." In re Cryomedical Sciences, 884 F. Supp. at 1020 (citing Juntti, 993 F.2d at 228).[13]

**POINT VII**

**THE FEDERAL CLAIMS OF PLAINTIFF GRIFFITH AND THE "FIDUCIARY SUB-CLASS" SHOULD BE DISMISSED FOR LACK OF STANDING**

Plaintiff D.M. Griffith purports to be the beneficiary of a trust for which BANA allegedly acted as trustee and which allegedly was invested at various times in various Nations funds. Class Compl. ¶ 13. Griffith purports to assert claims under Sections 11 and 12(a)(2) of the Securities Act and Section 10(b) of the Exchange Act on behalf of herself and a class of similarly situated trust beneficiaries. See, e.g., id. ¶¶ 37, 140, 149, 166, 176. Griffith is not, and was not, a Nations funds shareholder. Notwithstanding Griffith's attempts in the Class Complaint to imply that she purchased Nations funds herself, see id. ¶ 13, her certification reveals the reality: "Bank of America, N.A. purchased on multiple occasions varying amounts of the shares of [Nations funds]." Griffith Cert. ¶ 4. Because they are neither purchasers nor owners of the mutual fund shares, neither Griffith nor the putative members of her sub-class have standing to assert claims under the federal securities laws. See 15 U.S.C. § 77k(a); 15 U.S.C. § 77l(2); see also In re Storage Tech. Corp. Sec. Litig., 630 F. Supp. 1072, 1078 (D. Col. 1986);

[13] There appears to be a disagreement among the district courts in this Circuit on the application of the "culpable participation" requirement on a motion to dismiss. See In re Royal Ahold, 351 F. Supp. 2d at 408.

Greater Iowa Corp. v. McLendon, 378 F.2d 783, 789 (8th Cir. 1967); O'Brien v. Continental Ill. Nat'l Bank, 593 F.2d 54, 60 (7th Cir. 1979).

**POINT VIII**

**PLAINTIFFS LACK STANDING FOR CLASS CLAIMS**

Class plaintiffs claim to have owned shares in seven Nations funds that they allege to have been market-timed. Class Compl. ¶¶ 6, 11-13. Yet plaintiffs purport to bring a claim for damages to fifteen funds that were allegedly timed and another forty-one funds that were not timed. Id. ¶¶ 1, 6. Class plaintiffs' claims should be dismissed to the extent that they seek damages on behalf of any funds in which they do not own shares or any funds that they do not allege to have been market-timed. See Fund Class Omnibus Brief at 7-11.[14]

**POINT IX**

**VENUE IS IMPROPER IN SOME OF THE UNDERLYING CASES**

The Nations funds cases were brought in multiple jurisdictions, including California, New Jersey, Colorado, and Texas, some of which have little or no connection to the parties and witnesses. The defendants reserve the right to move to dismiss or transfer these cases on the grounds of improper venue, when and if this MDL proceeding terminates. See Fed. R. Civ. P. 12(b)(3); 28 U.S.C. § 1404.

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[14] While the four Nations LifeGoal Portfolios invest in other Nations funds, Class Compl. ¶ 129, none of the plaintiffs alleges ownership in any LifeGoal Portfolio. Id. ¶¶ 11-13 & plaintiff certifications.

**CONCLUSION**

For the reasons discussed herein and in the omnibus briefs, the Complaints must be dismissed in their entirety.

Respectfully submitted,

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March 7, 2005